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After 1850

Reassessing the Impact of the Fugitive Slave Law

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The 1850 Fugitive Slave Law might well be the worst piece of legislation in American history. Abolitionists began denouncing its draconian provisions even before final passage, while the controversial measure continued to provoke waves of anxiety among free African Americans for years afterward. Yet the sporadic enforcement of the statute in the decade before the Civil War also provoked howls of complaints from proslavery southerners. By 1861 the fire-eaters in the Deep South appeared even unhappier than northern antislavery forces about the troubled *status quo*. Secessionists angrily dismissed the federal fugitive slave code, in the words of the Georgia secession declaration, as "a dead letter."[1]

Somehow this troubled by-product of what had once been a grand national compromise seemed to inspire almost equal measures of panic and contempt. Such a political and legal mess, however, provokes an underappreciated challenge for modern-day historians. Was the 1850 Fugitive Slave Law more of a draconian measure or a dead letter? Unlike polarized contemporaries, scholars and teachers cannot have it both ways. Moreover, how does choosing sides in this particular interpretive battle affect our understanding about sectionalism and the contested state of "semiformal freedom" in the antebellum North?

The best way to answer such questions would be with a careful dissection of the 1850 fugitive law and its actual impact on runaways, but such an exercise is surprisingly difficult. How many cases were there?

What were the outcomes? How often did resistance occur? None of these basic issues yield simple answers, certainly not ones that have been properly quantified. There have been good, landmark academic studies, such as Stanley W. Campbell's *The Slave-Catchers* (1970) or John Hope Franklin and Loren Schweninger's *Runaway Slaves* (1999), but these scholars were often forced to rely on incomplete data, and sometimes they were guilty of employing vaguely defined terms. The result has been a series of misunderstandings that permeate modern discussions of the subject.[2]

Consider the oft-cited total of 332 fugitive cases in the decade before the Civil War—a figure derived from Campbell's groundbreaking work. This number, which he acknowledged at that time was tentative, refers to individuals, not cases, and involves not only federal tribunals authorized under the 1850 law but also recaption (or kidnapping) episodes outside of the law itself that were reported sporadically in antebellum newspapers and collected into pamphlet form by abolitionists like Samuel J. May. A close study of the appendix in *The Slave-Catchers* reveals that Campbell actually identified only about 125 rendition hearings held by U.S. fugitive slave commissioners between 1850 and 1861.

That nuance has been lost over the years, but it changes assessments of the law's impact. There were critical differences between the process of fugitive slave rendition and the common-law doctrine of recaption. The word "recaption" does not even appear in Campbell's book because he uses the less technical phrase "returned without due process" instead. Yet for the majority of slaveholders, the preferred solution to the fugitive crisis had always been the precise idea of recaption, or the principle of simply taking back one's mobile property (such as farm animals) whenever it got lost or wandered away. American slaveholders considered recaption to be an essential element of their right to human property. Abolitionists disagreed and called it kidnapping.[3]

Once students begin to appreciate the more careful distinctions among these types of fugitive slave cases, then patterns emerge which shed greater light on the practical meaning of the 1850 law. There can be little argument that it was a spectacular failure in its actual operations. Although never quite a "dead letter," even an antislavery radical like Salmon P. Chase was admitting in private by 1859 (to Abraham Lincoln, no less) that the statute had become "almost absolutely useless as a practical measure of reclamation."[4] Even when the law worked,

which it did on more than a few tragic occasions straight through the Civil War, it never really functioned as its framers had intended. Moreover, the exploding bitterness over the sporadic high-profile attempts at federal rendition also had a dramatic and positive impact on what Frederick Douglass sardonically labeled the "upper-ground railroad."[5] Black-led vigilance committees in the North spearheaded this defiant movement, but the coalition mobilized over the 1850s to frustrate all types of fugitive recapture was broad-based, multiracial, and—to a surprising degree—successful.

At its core, this resistance was about the free-soil principle and the evolving politics of sectionalism. Underground Railroad agents captivated public attention (both then and now), but it was the deliberate, persistent work of northern antislavery lawyers and politicians that ultimately exposed the crippling paradox embedded in the heart of the fugitive crisis, and which southern fire-eaters never conceded—that American federalism included a presumption of personal liberty to free black residents on free soil. This was the sectional concession that had made state personal liberty statues and individual habeas corpus petitions seem legitimate to most northerners, despite their own obvious color prejudice. Yet this crucial factor has long been obscured by the draconian shadow of the Fugitive Slave Law's harsh reputation. It has become almost too easy to forget how much free soil really mattered even after the federal code had changed so drastically in 1850.

ORIGINS OF THE FUGITIVE SLAVE LAW

The first thing to understand about the Fugitive Slave Law is that it was not called the Fugitive Slave Law—at least not officially. When the 31st Congress finally passed the measure in September of 1850, the bill's title read: "An Act to Amend an Act Supplementary to the Act Entitled, 'An Act Respecting Fugitives from Justice and Persons Escaping from the Service of Their Masters.'"[6] That mouthful was not simply the result of the ordinary legalese of bill making. It was instead the by-product of a seventy-plus-year debate over whether or not freedom was national in America.

The original U.S. Constitution excluded the words "slave" and "slavery." Historians still argue over what that omission really meant, but few bother to point out that those same words were omitted from

the 1793 and 1850 fugitive slave laws as well. The awkwardly phrased statutes employed terms such as "fugitives from labor" or "persons escaping from the service of their masters."[7] In other words, enslaved runaways were defined in the U.S. code as people even as federal law allowed southerners to treat them as property. This was about more than just semantics. From early in the process, federal framers had recognized that when it came to the subject of fugitive slaves, state laws mattered and that some states would presume people in their jurisdiction, regardless of color, to be free. Even the so-called fugitive slave clause in the 1787 Constitution might just as well be termed the "personal liberty clause" because it acknowledged both sides of that debate.

The clause prohibited states from allowing any "Person held to Service or Labour in one State" from being "discharged from such Service or Labour" within their own borders because of "any Law or Regulation therein." This is usually portrayed as a major proslavery concession designed to limit the reach of northern abolition laws.[8] However, the exact phrasing was the result of a true sectional compromise that involved more than just the promise of emancipation. Pierce Butler and Charles Pinckney of South Carolina had proposed late in the summer of 1787 that the new Constitution should specifically require that "fugitive slaves and servants to be delivered up like criminals." Skeptical northern delegates quickly objected that this rule would end up compelling state governors to handle slave-catching duties "at public expense." They also invoked the doctrine of recaption in what might be called an act of political jujitsu. The always-acerbic Roger Sherman of Connecticut observed archly that there was no need to invoke the procedures of criminal rendition for fugitive slaves because, under the logic of slavery, there was "no more propriety in the public seizing and surrendering [of] a slave or servant than a horse."[9]

The result was a fugitive slave clause that pointedly differed from the criminal extradition clause (Article IV, Section 2, Clause 2) by not naming the "executive Authority of the State" as the source for the interstate request but rather by authorizing the process to be triggered solely in these cases "on Claim of the Party." Yet to have a "Person held to Service or Labour" be "delivered up" to the "Party to whom such Service or Labour may be due" was also to acknowledge that there would be no further judicial process, as in state-regulated criminal rendition. For the freedom seeker, there would only be an immediate

return to enslavement. Thus, any hearing over the status of an accused fugitive would have to occur in the state where he or she had fled. This was where habeas corpus principles came into play, and yet by remaining silent on whether or how they could be applied in rendition hearings, the fugitive slave clause implicitly endorsed the concept of allowing personal liberty for free blacks in free-soil states. This helps explain why the clause was ultimately situated in article 4, and not article 1, because it was first and foremost about comity, or the relations among states. In short, nothing in the fugitive slave clause prevented free states from protecting their own black residents from kidnapping or from presuming (at least at first) that any black person seized within their territory was free. That was a necessary and significant concession to advocates for the *Somerset* or freedom principle.[10]

That was at least how free states began interpreting the clause. Before the Constitution was even formally ratified, the Pennsylvania legislature had passed an amendment to its 1780 gradual abolition law, which capitalized on these comity provisions by offering concrete protections for its free black residents. Section 7 of the revised 1788 statute threatened the punishment of £100 for anyone convicted of taking free blacks outside of the state "by force or violence" or through seduction "with the design and intention of selling and disposing" them as "a slave, or servant."[11] Over the years, most other northern states followed with their own anti-kidnapping or personal liberty laws. In his landmark study *Free Men All* (1974), Thomas Morris cataloged seventy relevant statutes from the 1780s to the 1860s in fourteen different free states, but even that impressive list was not quite comprehensive. Morris overlooked examples such as the 1816 Indiana statute called "Act to Prevent Man-Stealing" and the original California state criminal statute adopted in 1850, which threatened imprisonment of up to ten years per victim for the kidnapping of "any man, woman or child, whether white, black or colored."[12]

Morris also excluded from his purview what have been traditionally reviled as antebellum black laws or black codes. These discriminatory statutes in states such as Illinois and Iowa were notorious for attempting to prohibit the immigration of free blacks and for otherwise codifying various forms of segregation. Yet, despite this relentless color prejudice, these same laws also usually conceded valuable personal liberty rights to free blacks. In Illinois, for example, where the black laws were

so vicious in nature that Frederick Douglass once asked sarcastically if the "people of Illinois" were "the offspring of wolves and tigers," they still included serious punishments for the attempted kidnapping of free black residents.[13]

This context is essential for understanding the origins of both federal fugitive slave laws (1793 and 1850). These proslavery measures are best understood as rear-guard actions designed principally to appease slaveholders who felt threatened by the various personal liberty statutes or emerging vigilance (self-protection) societies that were being organized with increasing frequency across the free states to help guarantee the reality of personal liberty. Thus, the changes in federal code were not driven merely by the national power of slaveholders but rather by the deepening breakdown of comity. That was the direct impetus for the 1793 fugitive statute, for example, which developed out Virginia's refusal to extradite a cohort of men accused of kidnapping a free black resident of Pennsylvania under Section 7 of the 1788 Pennsylvania statute. Slaveholding interests in the Congress then used the dispute as leverage for obtaining a federal rendition law designed to help implement the fugitive slave clause. The subsequent statute was remarkably concise (less than seven hundred words), especially considering that it covered both fugitives from "justice" (Sections 1 and 2) and from "labor" (Sections 3 and 4). What was also revealing was that, unlike the sections for obstructing judicial rendition, the 1793 fugitive slave provisions did not threaten criminal penalties against anyone who might attempt to "rescue" or "harbor or conceal" runaway slaves but instead limited their legal jeopardy under federal law to civil fines.[14]

Somewhat more indirectly, that was also how the more notorious 1850 law emerged, as a delayed reaction to the Pennsylvania personal liberty regime. The story began in the aftermath of the Supreme Court ruling in *Prigg v. Pennsylvania* (1842), which had overturned Pennsylvania personal liberty provisions (enacted in both 1788 and 1826). That case was about the fate of a Maryland constable and slave catcher named Edward Prigg and a group of his associates who had been convicted in Pennsylvania of kidnapping Margaret Morgan, an alleged fugitive slave, and some of her free-born children. The controversial opinion from Justice Joseph Story addressed the escalating controversy over northern personal liberty statutes by prohibiting states from interfering with the manner in which fugitives were "delivered up" but

also conceding that they had no constitutional obligation to support the process with their own judicial officers or police resources. Ignoring its placement in Article IV and the obvious comity issues at stake, Story asserted that the fugitive slave clause imposed the greatest responsibility for rendition on the federal government, not the states. The Massachusetts-born jurist also pointedly endorsed a doctrine of national recaption, claiming that "the owner of a slave is clothed with entire authority, in every State in the Union, to seize and recapture his slave whenever he can do it without any breach of the peace or any illegal violence."[15]

That complex decision only made things worse, however. The rest of that decade was punctuated with dramatic and often bitterly contested fugitive cases and an escalating sense of a national "border war," as historian Stanley Harrold has put it.[16] Vigilance committees in the North began openly touting their successes in evading the federal law. This was the moment—in the mid-1840s—when the "underground railroad" metaphor was truly born. This was also the period when several northern states fully committed to their strategy of state nullification. Massachusetts and its 1843 "Latimer Law" pioneered a new generation of personal liberty statutes for northern states that now followed Story's guidelines but only exacerbated the existing interstate problems by attempting to withdraw involvement in fugitive matters altogether. Without participation from northern state and local officials, the rendition process became impossible to enforce. In his opinion, Story had addressed this problem by putting the onus squarely on Congress. "If there are not now agencies enough to make the assertion of the right to fugitives convenient to their owners," he wrote, "Congress can multiply them."[17] This particular challenge from *Prigg* became the driving force behind the 1850 Fugitive Slave Law.

What thus made the 1850 law so unique in American history was its ambitious plan to employ a network of specially designated U.S. commissioners to oversee a more efficient national rendition system. The law did not create these commissioners or administrative law officials for the various U.S. Circuit Courts, as some historians mistakenly claim, but it did represent probably the greatest expansion of federal criminal law enforcement up to that point.[18] The 1850 statute had ten sections and was more than twice as long as the 1793 law. The first five sections detailed the concurrent jurisdiction and full authority of the

commissioners to act in fugitive slave matters. Most notably, this authority also extended to "all good citizens" who were "commanded to aid and assist in the prompt and efficient execution of this law."[19]

Section 6 then explained the surprisingly elaborate judicial process for deciding fugitive slave cases. Of course, the procedures for these otherwise routine hearings needed to be spelled out in such excruciating detail because of the contested nature of the operations. Under this section, slaveholding claimants or their authorized agents had the option either of first obtaining arrest warrants from the commissioners or of seizing and bringing the alleged fugitives to the commissioners themselves. Then they were supposed to produce written evidence establishing both the identity and the enslaved status of the alleged fugitive in forms that were to be certified by some legitimate judicial authority from their home state. Any testimony from the runaways themselves was supposed to be prohibited. If a commissioner did issue a certificate of removal, then the verdict was also supposed to be final, not subject to interference or "molestation" from any other state or local judicial authority.

These last procedural matters were clearly designed to frustrate the personal liberty regime that had been spreading across the North. So were several of the remaining and highly controversial elements of the statute, which included much tougher penalties for aiding runaways and obstructing the law, and a suspicious set of extra fees provided to commissioners when ruling for claimants. Section 7 in the new statute provided for up to one thousand dollars in fines and up to six months in prison for any convicted aiders and abettors, in addition to civil liabilities now up to one thousand dollars per fugitive. It was Section 8 that offered the commissioners the inflammatory ten dollars for issuing a certificate of removal versus five dollars when denying the claim. The statute's framers defended this inequity (or bribe, as its critics declared) as being justified by the extra paperwork required for rendition. The ninth section went even further in acknowledging the difficult realities of runaway slave rendition across sectional lines, explicitly authorizing federal marshals to use whatever security force they deemed "necessary" in order to return fugitives safely. The final section circled back to suggest that slaveholders or their agents should originally file a record of any escaping "person held to service or labor" with their home court at the time of flight because later such certified documents

would be "taken to be full and conclusive evidence" in any federal rendition hearing.

The whole process stunk in the eyes of the northern antislavery press. Everything about the new system seemed stacked in favor of slaveholders. The fact that the law had been bundled together with the admission of California as a free state and other measures as part of the Compromise of 1850 did little to appease public outrage in the North. To antislavery forces, these measures appeared to be not only bad policy but also practically anti-American in their blatant disregard for personal liberty and due process. That explains the relentless propaganda, fiery convention gatherings, dramatic political cartoons, heated denunciations, and the litany of dire predictions hurled at the infamous statute as illustrations of the draconian nature of the Fugitive Slave Law.

However, there is always a difference between rules in the statute books and realities on the ground. The question in this situation was not so much about what the hated law promised (or threatened) but what it actually delivered. Over the next fourteen years until its final repeal in June 1864, the Fugitive Slave Law remained at, or near, the center of the sectional debate. Even during the Civil War, controversies over the law's enforcement occupied significant public attention among Unionists, especially in the border states. But, as is so often the case, all of that heat did not generate much light. From the beginning, the text of the 1850 Fugitive Slave Law got reworked, misconstrued, and sometimes outright ignored by the very people charged with bringing it to life.

OPERATIONS OF THE FUGITIVE SLAVE LAW

Perhaps no northern city better illustrates the challenges of implementing the post-1850 fugitive slave procedures than Philadelphia. President Millard Fillmore had signed the measure into law on September 18, 1850. Just one month later, the city experienced its first case under the new regime. But, of course, the new U.S. commissioner was not yet in place, so it was Supreme Court justice Robert Grier, sitting as a U.S. circuit judge, who presided over the hearing on the second floor of what is now known as Independence Hall. Despite the statutory efforts to limit due process for the accused fugitives, both sides in this matter had attorneys present and each called witnesses. There was also

a large, mostly antislavery crowd gathered outside. Inside the hearing room, the Pennsylvania-born jurist claimed that he "was disposed to give justice to the master as to the slave" but also added ominously for the slaveholding interests that "the master must prove his case to the very letter." Ultimately, Justice Grier ruled in favor of the accused fugitive, releasing him on a technicality borne out of the complicated and poorly followed procedures that had been detailed in the sixth section of the new law.[20]

Nor did things get much better for the so-called Slave Power once they finally got a real rendition from Philadelphia ordered up by the new commissioner, Edward Ingraham, after he had assumed his place in mid-December. Ingraham, a noted book collector and attorney, heard the case of Adam Gibson, who had been seized by ex-Philadelphia constable George F. Alberti and some of his deputies on December 21, 1850. These experienced slave catchers had arrested Gibson on the pretext that he was stealing chickens, but it was all a well-planned ruse. Instead, they hauled him over to the U.S. marshal at Independence Hall. Gibson had tried to resist, but the constables subdued him with a pistol, as angry crowds quickly gathered outside. What followed was not the kind of summary hearing that the statute's framers had envisioned. Somehow vigilance operatives had once again succeeding in mobilizing their network of antislavery lawyers, and within a couple of hours some of the city's toughest litigators were representing Gibson. They badgered the stunned novice commissioner with a variety of motions and convinced him to hear testimony from Gibson himself. None of this activity, however, swayed Ingraham, who ordered the fugitive sent back to his alleged owner in Elkton, Maryland. Yet, amazingly, the Maryland slaveholder refused to take custody of Gibson, acknowledging that the runaway slave he had been seeking was someone else.[21]

So the federal marshal in charge of the rendition prepared to bring Gibson back to Pennsylvania, presumably to free him, but while they were between trains in Delaware, the prisoner broke away and returned to Philadelphia by foot. He then received protection from local vigilance committee leader James G. Bias and appears to have been married within the next year and relocated with his wife, Sarah, and their growing family to the free black community in Timbuctoo, New Jersey, where he lived peacefully as a farm laborer until late into the nineteenth century.[22]

By contrast, Gibson's main nemesis, former constable Alberti, suffered a much different fate. In the spring of 1851 he went on trial in state court, along with one of his deputies, for kidnapping the free-born child of an alleged fugitive. The state judge was merciless in rendering his verdict, sentencing Alberti under the terms of Pennsylvania's revised (post-*Prigg*) 1847 personal liberty statute to a term of ten years of hard labor in prison and a one-thousand-dollar fine. Calling the kidnapping crime involving an infant to be a case "without a parallel in atrocity," the judge angrily declared "that the law of our State imposes it, and we will protect those colored persons *who are in a free land*."[23] Although Alberti eventually ended up receiving a pardon and serving less than two years in the penitentiary, it was still a remarkably revealing moment about the difference that free soil made in deciding matters of law and justice.

Naturally, not every fugitive case ended as well as the Gibson case for the northern antislavery forces. Stanley Campbell identifies about sixty individuals who were subject to the federal rendition process in that first year of operation under the new law. He believes fifty of those people were returned to the South and re-enslaved (although he mistakenly includes Gibson in this sad total), with another thirty or so taken in known recaption episodes.[24] But what absorbed public attention even more than the orderly renditions or the continuation of recaption customs were the handful of examples of dramatic rescue efforts. In 1851 three headline-grabbing episodes created particular shockwaves, especially in the South. The Shadrach case in Boston (February), the Christiana Riot in Lancaster County, Pennsylvania (September), and the Jerry rescue in Syracuse, New York (October), all involved successful efforts by northern vigilance committees and antislavery forces to impede the law. In total, six fugitives were rescued from federal custody by violent force, and one Maryland slaveholder was killed. Yet of the nearly seventy-five antislavery activists who were charged afterward in either state or federal courts, including thirty-eight men for committing treason at Christiana (still the largest treason indictment in U.S. history), only one was convicted.[25]

The Fillmore administration tried to not back down from what it perceived as an all-out assault on law and order. The Whig president responded by authorizing occasional deployments of military force (such as with the April 1851 extradition of Thomas Sims from Boston) and by

naming aggressive new commissioners, such as Richard McAllister in Harrisburg. Both national parties (Whig and Democrat) also pointedly endorsed the Compromise of 1850 measures, including the Fugitive Slave Law, in their 1852 election platforms. Still, the bottom line for enforcement was gravely disappointing to southerners. Between 1852 and 1854, there only about two dozen rendition hearings across the country and although episodes of violent resistance were fewer and less sensational, they still occurred. Moreover, a careful look behind the rendition statistics revealed serious disparities in enforcement. One particularly aggressive commissioner, like McAllister in Harrisburg, could skew the meager numbers dramatically. The central Pennsylvania commissioner accounted for nearly 40 percent of all the fugitives formally sent back to the South under the statutory rendition process during his brief time in office.[26]

In his recent book, *Making Freedom* (2013), Richard Blackett paints a devastating portrait of the little-known McAllister, who was, by southern standards at least, the model northern fugitive slave commissioner. The Harrisburg attorney once boasted to federal officials that he had remanded more fugitives "than any other U.S. Com," a true statement when he made it but one that also seems to have been his undoing. Federal auditors began scrutinizing his bulging reimbursement requests with increasing hostility. One rendition effort from Harrisburg to Maryland cost more than $233. The aggressive tactics of his office also turned McAllister and his men into local pariahs. He was forced out as a church vestryman, and his top deputies lost their elections for constable. Within less than two years, by 1853, the beleaguered officer had enough. McAllister resigned as a slave commissioner and eventually relocated to the Kansas territory where he served as a Franklin Pierce administration appointee. The Harrisburg slave-hunting operation was never the same.[27]

Vigilance operatives could be even more intimidating and quite effective further away from the Mason–Dixon line, in heavily antislavery New England and the Old Northwest. In 1854 a deputy federal marshal was killed in Boston during an attempted rescue of fugitive Anthony Burns and yet nobody went to jail for that crime. The Burns case was successful by some proslavery standards—the fugitive was returned (temporarily) to Virginia—but this was also the last official rendition of any fugitive from the New England states in the years before the Civil

War.[28] It was a symbol of failure for any true southern fire-eater. There were a couple of other sporadic recaption episodes in New England but no more formal hearings after May 1854.[29]

The especially combustible state of affairs in that region was evident just shortly after the Burns rendition, when the arresting officer in the case, Asa Butman, experienced a form of mob retribution as he was pursuing a different fugitive in Worcester, Massachusetts. That city's vigilance committee quickly spread the word about the presence of a notorious "kidnapper" with a series of broadsides, and soon crowds began to attack him. Before long, vigilance operatives tried to shield Butman from harm, fearing more bloodshed, although their admonitions to the crowd were sometimes carefully phrased. "Boys, don't kill him—don't strike him—but abuse him as much as you can!" one agent reportedly cried out. Butman went into hiding after the riot and subsequently abandoned his slave-catching duties, although he remained employed as a constable in Boston long after the war.[30]

This was also the same year that abolitionist Sherman Booth and his allies in Wisconsin rescued fugitive Joshua Glover from federal custody in Milwaukee—a dramatic case that would eventually reach the Supreme Court as *Ableman v. Booth* in 1859. The Wisconsin Supreme Court tried to nullify the 1850 Fugitive Slave Law in this extended legal saga, an action that Chief Justice Roger Taney found astonishing. In this instance, he dismissed their states' rights maneuvers by observing in his 1859 opinion that the national government could not "have lasted a single year" if states like Wisconsin could obstruct enforcement of federal fugitive slave laws through their personal liberty statutes.[31]

Stanley Campbell takes note of these well-known episodes but records only nineteen successful rescue episodes in seven different northern states between 1850 and 1861. He therefore concludes that the statute was enforced far more often than it was resisted. That is a somewhat misleading insight, however. Campbell's figures do not include a resistance episode like the one in Worcester that intimidated constable Butman. Nor does the scholar address a wide range of physical and often-violent confrontations that "rescued" fugitives by generally preventing recapture efforts. By contrast, Lois Horton reports that she has identified through her newspaper research more than eighty episodes that she characterizes as "well publicized rescues and rescue attempts."[32] Here is also one area where digital databases offer even

greater promise for expanding the scope of available information. Consider this previously unnoticed report from Abraham Lincoln's hometown newspaper in Springfield, Illinois, which appeared in August 1857 under the headline: "Attempt to Kidnap Free Negroes at Cairo." That story claimed "a large party of armed Missourians" had attacked the southern Illinois town on a recent Sunday morning, attempting to carry away local black residents as runaway slaves. According to the correspondent, some of Cairo's white citizens fought back against this unwarranted invasion, foiling the kidnapping, badly wounding one of the Missourians, and then arresting several of the others.[33]

Remember, this was not Thomas Wentworth Higginson's Boston but rather notoriously proslavery southern Illinois. The author of the state's hated black codes, John A. Logan, represented this region in the legislature. If any single piece of evidence can demonstrate the underappreciated extent of northern resistance to the Fugitive Slave Law during the 1850s, it might be this one, which was not counted in Campbell's tabulations but which future president Lincoln surely read about with considerable interest.

This forgotten episode in southern Illinois also underscores a regional shift that was occurring in the enforcement patterns under the new fugitive slave code. During the entire period between 1850 and 1861, almost 90 percent of the official rendition hearings took place in just five states: Illinois, Indiana, New York, Ohio, and Pennsylvania.[34] But if the Mason–Dixon line marked the main combat theater of the fugitive crisis during the first half of the decade, then it was the Ohio River that became the critical frontline of the battle in the second half of the 1850s. During the six years directly preceding the Civil War, there were only about eighty-one accused fugitives who appeared in front of a U.S. commissioner in any of the free states. Just over 20 percent of them were either rescued or released from custody. The remaining sixty-four individuals were sent back to slavery, but these cases were almost exclusively concentrated in Ohio. Between 1855 and 1861, nearly 75 percent of the official fugitive renditions taking place from within the free states occurred just across the very tense border between Kentucky and Ohio. These involved some of the most infamous and tragic events of the antebellum era, such as the Margaret Garner affair in 1856, where a mother killed her daughter in Cincinnati to avoid her rendition to Kentucky, or the Oberlin-Wellington rescue of 1858, where

a group of die-hard abolitionists faced jail and potential martyrdom for rescuing a fugitive from federal custody.

Southerners paid careful attention to what was happening in Ohio. In June 1857 the *Charleston Mercury* featured an article about growing sectionalism under the headline "The Progress of Treason." The piece focused (without much irony) on the problem of northern nullification and reprinted angry excerpts from a Democratic newspaper in Cincinnati that had just recently blasted Ohio's governor, Salmon P. Chase, for his role in obstructing the 1850 Fugitive Slave Law. It accused him "and his abolition crew" of making "the equivalent to a declaration of war . . . against the United States Courts." Complaining about the varied state and local attempts to frustrate the rendition of a Kentucky fugitive named Addison White, the editorial was adamant that there had never been "a more outrageous case of resistance to the authority of the United States."[35] To begin, White had resisted his arrest with a gun. Then local residents helped rescue him with pitchforks and some deception. Frustrated, the federal marshals arrested several of these local operatives but soon found themselves threatened with their own arrests by an antislavery local sheriff and his men, whom they subsequently beat in violent fashion. But that did not end the story. Ohio law enforcement eventually managed to detain some of the federal marshals, creating a high stakes legal standoff. Today this case is largely forgotten, but at the time it was one of the more notable fugitive battles of the era. Moreover, the tense jurisdictional issues were not fully resolved until later that summer when Governor Chase and President James Buchanan met in secret in Washington to cut a deal that avoided any further escalation in hostilities between Ohio and the federal government.

The deal did not include any rendition for Addison White or any punishment for the local Underground Railroad operatives. Everybody, including the federal marshals, was released from jail, with all charges dropped. The only concession to slavery was that the residents of Mechanicsburg, Ohio, where White had been residing, agreed to help pay off his disgruntled owner by formally purchasing his freedom. Addison White later served in the Union army as part of the 54th Massachusetts and returned to life as a farmer in Ohio after the war. For Stanley Campbell, who includes a vivid series of details about this episode in his monograph, the bottom line was somehow that it had proven how

well the new system worked. "While Addison White was rescued," he writes, "Southerners could not argue in this case that federal officers did not vigorously prosecute the violators of the Fugitive Slave Law."[36]

Such a conclusion almost defies belief. Nobody in Ohio faced any real consequences for defying federal authority in 1857. Proslavery southerners had long argued that resistance to the law was not only widespread across pockets of the North but also utterly unpunished, almost from the beginning of the system's operations. The problem as southerners saw it went far beyond just the lack of consequences for those involved in high-profile resistance episodes, like those seventy-five activists who largely escaped punishment in 1851. In fact, it is difficult to identify northern figures who got punished under Section 7 of the 1850 statute, whether by fines or imprisonment. One well-known civil penalty concerned the fate of Rush R. Sloane, an attorney in Sandusky, Ohio, who stood accused of obstructing a Kentucky claimant in 1852 whose three slaves had been released by the local mayor under intense pressure and threat of violence. Two years later, a federal jury did assess damages, and Sloane was compelled to pay over $3,000 with costs.[37] That was an exceptionally steep payout, however, and a rare one. Moreover, most fines and assessments got reduced after trial. One Missouri slaveholder spent three fruitless years at the beginning of the decade chasing after $2,900 promised to him in a jury award leveled against a group of antislavery Quakers from Salem, Iowa. As one local historian put it, the slaveholder finally gave up in disgust, having "never collected a dime."[38]

Criminal punishments were even less common than civil penalties. There were no more than a handful or two of convictions over the course of the entire antebellum decade, and some of them were purely symbolic. In what the *New York Herald* labeled a "singular slave case in Indiana," there was a "successful" prosecution of Benjamin Waterhouse in late 1854. He was convicted of obstructing the fugitive law with help from the testimony of former president Millard Fillmore's brother, but the jury returned a verdict of one-hour imprisonment (in the courtroom) with a fifty-dollar fine. "Such is the result of the first case tried in Indiana, under the 7th section of this Fugitive law," exclaimed the *Herald*. Another Illinois abolitionist, John Hossack, spent ten days in prison in Chicago in early 1860, but his sympathetic jailers allowed him out each night to dine with antislavery supporters.[39]

Even without the kind of harsh punishment in the North under federal law that southerners routinely meted out to their convicted "slave stealers" under their own state laws, there is still the fundamental question about the plight of the freedom seekers themselves once they reached northern soil. The majority of the few hundred runaways identified in Campbell's book were returned to enslavement, whether by rendition or recaption. That is a fact. But that is not nearly the whole story. Now that Eric Foner has rediscovered Sydney Howard Gay's "Record of Fugitives" covering the New York vigilance operations, with its documentation for over 200 individual runaways during the mid-1850s, there is basis for some important revisionism. The successful New York escape cases, combined with another 250 from the same period in the Boston vigilance records and more than 800 accounts in the Philadelphia vigilance materials preserved by William Still, suggests a hard, contemporary data set of about 1,250 successful covert escapes in the years following passage of the Fugitive Slave Law. But add to that baseline figure all of the successful escapes in other cities that were reported in the contemporary antislavery press and the total moves closer to a few thousand. In other words, it seems quite certain that runaways were at least ten times likelier to succeed than fail if they just made it across the Mason–Dixon line or the Ohio River during the years immediately before the Civil War.[40]

Context like this is essential for reinterpreting the threat of kidnapping and the patterns of free black migration after 1850. There is little doubt that the continued digitization of antebellum newspapers will uncover more episodes of both kidnapping and resistance from the 1850s, but it strains credulity to believe that thousands of cases went unreported in that highly polarized press. Fear of kidnapping may have intensified, but the reality on the ground was much different. The vigilance movement was obstructing rendition and frustrating recaption. While the passage of the Fugitive Slave Law undoubtedly sparked some mass removals of black church groups or small borderland communities, the majority of black residents in the North remained where they were, preferring to risk fight over flight.

This somewhat unconventional claim can be illustrated with a simple review of some key demographic figures. According to Michael Wayne's careful calculations on the 1861 Canadian census, there was only somewhere between 10,000 and 13,000 U.S.-born blacks living in Canada

West on the eve of the American Civil War out of total black population in that province (and thus effectively in all of Canada) that he estimates as between 17,000 and 23,000. Even if two-thirds of them had arrived during the 1850s (a very generous estimate), that likely range of 6,500 to 8,500 refugees over the span of a decade does not seem to match the hyperbole of free black "flight" (or a mass exodus of Canaan-bound runaways) following the passage of the Fugitive Slaw Law.[41] Compare, for example, those several thousand possible migrants to the 250,000 free blacks who remained in the antebellum North. Or look specifically at the gains in free black antebellum communities in northern border states like Ohio and Pennsylvania. In Ohio's case, there was an extraordinary overall 48 percent increase, from 25,000 black residents in 1850 to nearly 37,000 by 1860—and this despite the fact that Ohio was practically ground zero for Fugitive Slave Law enforcement in the North. In Pennsylvania, some key counties along the Mason–Dixon line did appear to lose small numbers of free black residents over the span of the decade (such as in Lancaster and York), but the most urban counties (like Philadelphia) made modest gains.[42] Ultimately, one cannot help but suspect that it was other economic factors, like the Panic of 1857, rather than the politics of the Fugitive Slave Law that was providing the main push–pull dynamic for antebellum black migration.

CONCLUSION

In February 1859 a story appeared in the *National Anti-Slavery Standard* that gleefully exposed the broken reality of the fugitive slave rendition system. The New York–based abolitionist newspaper (previously edited by Sydney Howard Gay) decided to break away from its reporting on an antislavery convention in Philadelphia to regale its readers with the views of George Alberti, the former slave catcher "whose name has been associated with almost every remarkable slave case that has occurred in Philadelphia for the last forty years." A correspondent had tracked down the sixty-nine-year-old man at his modest home in the south side of the city, interviewing him at length about his various encounters with runaway slaves. Alberti proudly showed off numerous scars, on his head, arms, and legs, claiming he had been shot at least sixteen times. They discussed his most sensational case, the one that resulted in his worst (but not his only) conviction in 1851. In fact, no

Underground Railroad agent in the North had ever faced such a severe punishment for a role in any fugitive episode. According to the *Standard*, it was because of such punishment and widespread resistance that Alberti had long since become a "historical" figure whose "occupation is gone." Alberti had been a leading slave catcher, perhaps the most notorious one in the entire North, and yet by 1859 abolitionists were willing to declare him a relic of a bygone era.[43]

That declaration of victory was perhaps premature, but it was not an isolated sentiment. A few months later, in the spring of 1859, as Republicans in Ohio were calling for a renewed national campaign to repeal the 1850 fugitive statute, Governor Chase expressed a similar view to Abraham Lincoln, a fellow antislavery politician whom he had not yet met in person. Lincoln had taken the initiative and quietly reached out to Chase in private correspondence because he feared that such calls for repeal would "explode" the 1860 Republican national convention. Always with an eye on the politics of the moment, Lincoln warned that the "cause of Republicanism" would be "hopeless in Illinois" under such radical public positions.[44]

Chase was not impressed by Lincoln's caution, assuring him that Republicans in Illinois would simply have to be "educated up to" the necessity of repealing the hated law, which the governor labeled as "unnecessarily harsh & severe" and yet also at the same time "almost absolutely useless as a practical measure of reclamation." Chase then offered a revealing insight for the benefit of Lincoln's calculating political mind. He pointed out that for "thousands who do not concur in our movement" and for what he asserted were "nearly all the leading minds of the South," there was also widespread agreement that the Fugitive Slave Law was "next to worthless as a practical measure." Then the legendary "Attorney General for Fugitive Slaves" tacked on a copy of some recent legal briefs filed by his state in notable fugitive cases and assured the Springfield attorney that he would be "very glad to have your views."[45]

Undaunted, Lincoln did soon share his legal views with Chase, which generally mirrored the position of Justice Story in the *Prigg* case (1842), but the purpose of his 1859 outreach was purely political. "My only object," Lincoln observed coolly, "was to impress [upon] you . . . that the introduction of a proposition for the repeal of the Fugitive Slave law, into the next Republican National convention, will explode the

convention and the party."[46] For the always-pragmatic Lincoln, there seemed to be no point in arguing over a measure that everyone was acknowledging was either "absolutely useless" or "next to worthless."

The Republicans ended up following Lincoln's advice. Their 1860 platform mentioned nothing about repealing the Fugitive Slave Law. The party did denounce the Buchanan administration for its "attempted enforcement everywhere, on land and sea, through the intervention of Congress and of the Federal Courts of the extreme pretensions of a purely local interest," but beyond that vague statement, it did not go.[47] Still, secessionists understood those words as only further confirmation that a cornerstone of national compromise from 1850 had finally become little more than a "dead letter." As the Republicans prepared to take over the administration of the national government, the secession ordinances of several southern states complained bitterly about the history of noncompliance with the act. Ultimately, of course, Lincoln and Chase worked together during their wartime administration to curtail enforcement of the fugitive law and to help shepherd through its repeal by the Congress in spring 1864. By that point, both men and their party were fully committed to achieving the complete abolition of slavery through a constitutional amendment. What had always been so contested and so confused about the fate of American "fugitives from labor" was finally settled.

NOTES

1. Georgia declaration of secession, January 29, 1861, Yale Law School, Lillian Godman Law Library, The Avalon Project, http://avalon.law.yale.edu/19th_century/csa_geosec.asp.

2. Stanley W. Campbell, *The Slave Catchers: Enforcement of the Fugitive Slave Law, 1850–1860* (Chapel Hill: University of North Carolina Press, 1970); and John Hope Franklin and Loren Schweninger, *Runaway Slaves: Rebels on the Plantation* (New York: Oxford University Press, 1999).

3. On recaption, see Eric Foner, *Gateway to Freedom: The Hidden History of the Underground Railroad* (New York: W. W. Norton, 2015), 32.

4. Salmon P. Chase to Abraham Lincoln, June 13, 1859, Abraham Lincoln Papers, Library of Congress, Washington, D.C.

5. Frederick Douglass, *Narrative of the Life of Frederick Douglass: An American Slave* (Boston: Anti-Slavery Office, 1845), 101.

6. See full text of the 1793 statute under Acts of Congress, February 12, 1793, in *A Century of Lawmaking for a New Nation: U.S. Congressional Documents and*

Debates, 1774–1875, Annals of Congress, 2nd Congress, 2nd Session, American Memory Project, Library of Congress, http://memory.loc.gov/cgi-bin/ampage?collId=llac&fileName=003/llac003.db&recNum=702.

7. See full text of the 1850 statute, passed on September 18, 1850, Yale Law School, Lillian Godman Law Library, The Avalon Project, http://avalon.law.yale.edu/19th_century/fugitive.asp.

8. See David Waldstreicher, *Slavery's Constitution: From Revolution to Ratification* (New York: Hill and Wang, 2009).

9. From James Madison's notes on the Constitutional Convention, August 28, 1787, available at TeachingAmericanHistory.org, http://teachingamericanhistory.org/convention/debates/0828-2/.

10. Don E. Fehrenbacher with Ward M. McAfee, *The Slaveholding Republic: An Account of the United States Government's Relations to Slavery* (New York: Oxford University Press, 2001), 102.

11. Amended statute, March 29, 1788, available at "The President's House in Philadelphia," Independence Hall Association, http://www.ushistory.org/presidentshouse/history/amendment1788.php. Gary B. Nash and Jean R. Soderlund dismiss this now mostly forgotten amendment as offering little more than "meek provisions against kidnapping" in their seminal book *Freedom by Degrees: Emancipation in Pennsylvania and its Aftermath* (New York: Oxford University Press, 1991), 198, but they were analyzing its impact in the context of the kidnapping crisis that emerged along the Mason–Dixon line after 1800. The eventual failures of the law, however, should not mitigate the significance of its framers' intent. In 1788 Pennsylvania legislators took a pioneering stand for personal liberty.

12. Thomas D. Morris, *Free Men All: The Personal Liberty Laws of the North, 1780–1861* (Baltimore: Johns Hopkins University Press, 1974). For other relevant statutes in Indiana, California, and elsewhere, see John Codman Hurd, *The Law of Freedom and Bondage in the United States*, 2 vols. (Boston: Little, Brown, 1862).

13. Douglass in 1853 quoted in Matthew Norman, "The Other Lincoln–Douglas Debates: The Race Issue in Comparative Context," *Journal of the Abraham Lincoln Association* 31 (Winter 2010): 5.

14. Fehrenbacher and McAfee, *Slaveholding Republic*, 209–13.

15. *Prigg v. Pennsylvania*, 41 US 539 (1842), available at Justia, https://supreme.justia.com/cases/federal/us/41/539/.

16. Stanley Harrold, *Border War: Fighting over Slavery before the Civil War* (Chapel Hill: University of North Carolina Press, 2010).

17. *Prigg v. Pennsylvania*, 41 US 539 (1842).

18. Charles A. Lindquist, "The Origin and Development of the United States Commissioner System," *American Journal of Legal History* 14 (January 1970): 1–16.

19. 1850 fugitive statute, September 18, 1850.

20. "The First Fugitive Slave Case in Philadelphia," *Philadelphia Evening Bulletin*, October 18, 1850.

21. "Fugitive Slave Case," *Philadelphia Evening Bulletin*, December 21, 1850; and "Fugitive Slave Case," *Philadelphia Public Ledger*, December 23, 1850.

22. "Return of the Alleged Fugitive," *Philadelphia Public Ledger*, December 24, 1850. Adam Gibson, born in 1823 in Maryland, appears in the U.S. Census for Burlington County, New Jersey, with wife, Sarah, as late as 1880.

23. March 24, 1851, P. A. Browne, *A Review of the Trial, Conviction, and Sentence of George F. Alberti, for Kidnapping* [Philadelphia] 1851.

24. See Campbell, *The Slave-Catchers*, appendix.

25. Enoch Reed was convicted of resisting a federal officer in the Jerry rescue case and received a brief sentence that was likely to have been overturned, but he died while it was still on appeal. For details on the Jerry rescue, see Milton C. Sernett, *North Star Country: Upstate New York and the Crusade for African American Freedom* (Syracuse, N.Y.: Syracuse University Press, 2002), 143. For the Shadrach case, see Gary Collison, *Shadrach Minkins: From Fugitive Slave to Citizen* (Cambridge, Mass.: Harvard University Press, 1997). For the Christiana riot, see Thomas P. Slaughter, *Bloody Dawn: The Christiana Riot and Racial Violence in the Antebellum North* (New York: Oxford University Press, 1991).

26. Based on statistics derived from Campbell, *The Slave-Catchers*, appendix.

27. R. J. M. Blackett, *Making Freedom: The Underground Railroad and the Politics of Slavery* (Chapel Hill: University of North Carolina Press, 2013), 35–51.

28. Albert J. Von Frank, *The Trials of Anthony Burns: Freedom and Slavery in Emerson's Boston* (Cambridge, Mass.: Harvard University Press, 1998).

29. Campbell, *The Slave-Catchers*, appendix.

30. Von Frank, *Trials of Anthony Burns*, 305–6.

31. *Ableman v. Booth* 62 US 506 (1859), available at Cornell Law School, Legal Information Institute, https://www.law.cornell.edu/supremecourt/text/62/506. For details on the Glover rescue, see H. Robert Baker, *The Rescue of Joshua Glover: A Fugitive Slave, the Constitution, and the Coming of the Civil War* (Athens: Ohio University Press, 2006).

32. For reference to the eighty resistance episodes, see Lois E. Horton, "Kidnapping and Resistance: Antislavery Direct Action in the 1850s," in *Passages to Freedom: The Underground Railroad in History and Memory*, ed. David W. Blight (Washington, D.C.: Smithsonian Books; Cincinnati, Ohio: National Underground Railroad Freedom Center, 2006), 166. For Campbell's list, see table 12 in the appendix to Campbell, *Slave-Catchers*, 207.

33. Springfield *Illinois State Journal*, "Attempt to Kidnap Free Negroes at Cairo," August 1, 1857, p. 2, col. 3.

34. Statistics derived from Campbell, *The Slave-Catchers*, appendix.

35. *Cincinnati Enquirer* reprinted in "The Progress of Treason," *Charlestown Mercury*, June 17, 1857, p. 2, col. 1.

36. Campbell, *The Slave-Catchers*, 164.

37. Roberta Sue Alexander, *A Place of Recourse: A History of the U.S. District Court for the Southern District of Ohio, 1803–2003* (Athens: Ohio University Press, 2005), 40–42.

38. Lowell J. Soike, *Necessary Courage: Iowa's Underground Railroad in the Struggle Against Slavery* (Iowa City: University of Iowa Press, 2013), 46.

39. "Speech of John Hossack on the Fugitive Slave Law," 1860 broadside, available at Frontier to Heartland, Newberry Library, Chicago, Ill., http://publications.newberry.org/frontiertoheartland/items/show/245.

40. Foner, *Gateway*, 190–215; and Larry Gara, "William Still and the Underground Railroad," Pennsylvania History 28 (January 1961): 33–44. For Boston vigilance records, see the account books of Francis Jackson, Massachusetts Historical Society, digitized by students from Beverly High School, available at PrimaryResearch.org, http://primaryresearch.org/account-book-of-francis-jackson/. There was some overlap in cases from the Philadelphia, New York, and Boston records, but not enough to dilute the overall assessment that there are records to document "about" 1,250 documented successful escapes.

41. Michael Wayne, "The Black Population of Canada West on the Eve of the American Civil War: A Reassessment Based on the Manuscript Census of 1861," *Histoire Sociale/Social History* 28 (1995): 465–85.

42. Consult U.S. Census figures from 1850 to 1860.

43. "Interview with Alberti the Slave Catcher," *National Anti-Slavery Standard*, February 19, 1859, p. 2, col. 6.

44. To Salmon P. Chase, June 9, 1859, in Roy P. Basler, ed., *The Collected Works of Abraham Lincoln*, 8 vols. (New Brunswick, N.J.: Rutgers University Press, 1953), 3:384.

45. Salmon P. Chase to Abraham Lincoln, June 13, 1859, Abraham Lincoln Papers, Library of Congress.

46. To Salmon P. Chase, June 20, 1859, *Collected Works*, 3:386.

47. Republican Party Platform of 1860, adopted May 17, 1860, available at the American Presidency Project, http://www.presidency.ucsb.edu/ws/index.php?pid=29620.